STATE OF MICHIGAN
SUPREME COURT

Appeal from the Opinion and Order
entered by the Sixth Judicial Circuit
(Oakland Co.) dated September 9, 2002.

IN THE MATTER OF

KIARA HERRON, KEANGELO LAGRONE, KEMARIA LAGRONE, AND KEJUAN JEFFERSON
----------/
FAMILY INDEPENDENCE AGENCY,
Petitioner

v.

TINA JEFFERSON, RICHARD JEFFERON, FREDERICK HERRON ,LARRY LAGRONE
Respondents
----------/

Supreme Court
No. 122666
COA No. 244028
Oakland Co. Circuit Ct.
No. 98--613188 NA
(Judge Joan E. Young)

BRIEF ON APPEAL OF APPELLEE/RESPONDENT MOTHER

ORAL ARGUMENT REQUESTED

BY: KAREN GULLBERG COOK P26141
ATTORNEY FOR TINA JEFFERSON
18149 Kirkshire
Beverly Hills, Michigan 48025
Tel.248-644-7678

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COUNTER STATEMENT OF QUESTIONS PRESENTED

1. DOES A PUTATIVE FATHER HAVE STANDING IN A JUVENILE CODE CHILD PROTECTIVE PROCEEDING TO REQUEST A PATERNITY DETERMINATION WHEN THE CHILDREN IN SAID PROCEEDING ALREADY HAVE A LEGAL FATHER?

Appellant/ Lawyer-Guardian ad Litem answers YES in certain circumstances.

Appellee/Respondent Mother answers NO.

Appellee/Co-Petitioners' answer is UNKNOWN.

Appellee/Respondent Legal Father 's answer is UNKNOWN.

Appellee/Respondent Lagrone answers YES.

Appellee/Respondent Herron's answer is UNKNOWN.

The trial court reluctantly answered YES because it felt constrained by In re Montgomery,185 Mich App 341; 460 NW2d 610 (1990).

2. IS THERE ANY LEGAL SIGNIFICANCE OF THE TRIAL COURT'S FINDING THAT THE PUTATIVE FATHER IS THE BIOLOGICAL FATHER OF THREE OF THE CHILDREN ?

Appellant/Lawyer-Guardian ad Litem answers YES.

Appellee/Respondent Mother answers NO.

Appellees/Co-Petitioners' answer is UNKNOWN.

Appellee/Respondent Legal Father's answer is UNKNOWN.

Appellee/Respondent Lagrone answers YES.

Appellee/Respondent Herron's answer is UNKNOWN.

The trial court reluctantly answered YES only because it felt constrained by In re Montgomery, supra, but thought that this Court's subsequent holding in In the Matter of CAW denied standing.

3. DO THE JUVENILE COURT RULES PROVIDE GREATER STANDING TO A PUTATIVE FATHER THAN IS PROVIDED BY THE PATERNITY ACT?

Appellant/Lawyer- Guardian ad Litem answers YES.

Appellee/Respondent Mother answers NO because the Juvenile Court Rules, at MCR 3.903(A)(7) and (23) do not endow a putative father with standing and MCR 3.921(C) is a notice provision, not a standing provision of the Juvenile Court Rules.

Appellee/Legal father's answer is UNKNOWN

Appellees/Co-Petitioners' answer is UNKNOWN.

.Appellee/Respondent Lagrone answers YES.

Appellee/Respondent Herron's answer is UNKNOWN.

The trial court answered YES reluctantly only because of In re Montgomery, supra..

4. GIVEN THAT MCR 3.921(C)(2)(b) [formerly MCR 5921(D)(2)(b)] AUTHORIZES A FAMILY DIVISION JUDGE TO DETERMINE THAT THE PUTATIVE FATHER IS THE CHILD'S "NATURAL" FATHER, DOES THE RULE AUTHORIZE THAT JUDGE TO DETERMINE THAT THE PUTATIVE FATHER IS THE LEGAL FATHER OR MUST THE PUTATIVE FATHER FILE A COMPLAINT PURSUANT TO PATERNITY ACT?

Appellee/Lawyer-Guardian ad Litem answers that the putative father must file a complaint, but also said that the Juvenile Court could find that he had standing.

Appellee/Respondent Mother answers NO and further states that if a legal father exists, a putative father lacks standing under the former or

current Juvenile Court Rules, and the current court rule MCR 3.903(A)(23) settles the issue of paternity standing in every child protective proceeding.

Appellee/Respondent Legal Father' s answer is UNKNOWN.

Appellee/Respondent Lagrone's answer is YES that the trial court in a child protective proceeding can determine paternity.

Appellee/Respondent Herron's answer is UNKNOWN.

The trial court reluctantly thought that it could determine paternity.

5) DOES **IN RE CAW** (Docket N0 122790) apply to this case?

Appellant/Lawyer-GAL answers YES.

Appellee/Respondent/ Mother answers YES.

Appellee/Respondent Legal Father's answer is UNKNOWN.

Appellees/Co-Petitioners answer is UNKNOWN.

Appellee/Respondent Lagrone's answer is NO.

Appellee/Respondent Herron's answer is UNKNOWN.

The trial court did not answer the question prior to this appeal.

COUNTER STATEMENT OF FACTS

On April 25, 2002 , the Oakland County Family Independence Agency and the Oakland County Prosecutor as Co-Petitioners filed a petition alleging neglect of minor children Kiara Herron, Keangelo Lagrone, Kemaria Lagrone, and Kejuan Jefferson, and requesting permanent wardship. The petition amended twice named the two legal parents- the mother, Tina Jefferson, and her husband, Richard Jefferson as respondents, but also named two putative fathers Larry Lagrone and Frederic Herron as respondents as well as John Doe fathers. {App. 3a, 10a, 13a-14a}. The trial court found that Respondent Appellee Mother, Tina Jefferson had married Respondent Richard Jefferson in May 4, 1988, remained married, that no divorce had been filed, and that all four children were born into the marriage and and thus Richard Jefferson was the one and only legal father at the time of filing the original petition. {App. 7a, 20a-21a}.

On **May 8, 2002**, a pretrial hearing was held before Referee Twila Lee. The Court immediately inquired about any other fathers and asked if there was a request to terminate on them. The Referee Lee stated that Court was not willing to stop the proceeding (presumably to determine paternity) once it had proof that Richard Jefferson was the legal father. {App.16a}. Frederick Herron's court-appointed attorney Abbie Shuman claimed her client was the putative father of Kiara {App.18a}.

On behalf of Larry Lagrone, Mr. Otlewski asserted that the Children's Protective Services' worker, Mr. Touchstone, had helped to schedule Mr. Lagrone for a blood test, and the result would be available after June 25th {2002}. To that the Court replied that it did not matter what would happen as to

the results of the paternity test for Mr. Lagrone because he would still not be the legal father. Mr. Otlewski agreed and stated that becoming the legal father would require "an additional step." Mr. Otlewski argued that his client was prepared to take some action to set aside Mr Jefferson's status as a legal father if the blood test showed that he was the biological father. {App.17a}.

On **July 8, 2003,** the date of a scheduled bench trial before Referee Lee, the legal father Richard Jefferson appeared. The Court inquired of him if he was married to the mother, and he stated that they had been married on May 24, 1988. {App. 18a}. Counsel for Frederick Herron stated that according to her client's mother, her client had not had DNA paternity testing. {Id}. Larry Lagrone's counsel requested that the court find that his client was the natural father and find that his alleged biological children were born out of wedlock. Counsel cited only court rule MCR 3.903(A)(4) as authority. {App. 20a-21a}. The Court then proceeded to swear in Tina Jefferson to take testimony on the paternity of the children. Mrs. Jefferson testified that Richard Jefferson had fathered her son Richard Jefferson.She testified that her husband went to prison in 1992 for four years, subsequently came home for about six months, went back for four years, came home again, and was currently in prison. In regard to Kiara, she only had had relations with Mr. Herron and believed him to be the father. As to the other three children she stated that the biological father was Larry Lagrone {App. 22a-23a}.

On **July 26, 2002,** Judge Young held a hearing on father Larry Lagrone's motion to become the legal father. {App.3a} Larry Lagrone's counsel argued that by Referee Lee's finding that Larry Lagrone was the biological father meant that Richard Jefferson was not the father under MCR 5.903(A)(4) Counsel for mother argued that putative fathers had no standing, that the

Juvenile Code is silent on fathers, and that the Juvenile Court Rules were there not to expand the court's authority, but to provide procedure. That the children in question were not born to an unmarried woman was definitive. {App. 6a}. The Prosecutor, the legal father and the other "fathers" relied on In re Montgomery, supra, to argue for the standing of putative fathers. {App. 6a-7a}.

Judge Joan E. Young issued a written opinion on September 9, 2003. The Court, despite being troubled by In re Montgomery, 185 Mich App 41 460 NW2d 610 (1990) because it was "inconsistent with a line of cases decided under the Paternity Act, believed that it was controlling case law. Thus, the trial court in a child protective proceeding could substitute fathers. Consequently, the trial court law granted Larry Lagrone's motion to find him the legal father. {Opinion and Order of the Court September 9, 2002, App.4a-8a}.

ARGUMENT I.

A PUTATIVE FATHER LACKS STANDING UNDER THE JUVENILE CODE TO REQUEST PATERNITY DETERMINATION IN A CHILD PROTECTIVE PROCEEDING IF THE CHILDREN ALREADY HAVE A LEGAL FATHER.

Standard of Review .Questions of law are reviewed de novo. People v. Stevens, 460 Mich 626: 597 NW2d 5 (1999) and Robertson v DaimlerChrysler Corp 465 Mich 7, 739; 641 NW2d 567 (2002).Standing is a legal issue reviewed de novo. Lee v. Macomb Co. Board of Commissioners, 464 Mich 726, 734; 629 NW2d 900 (2002). This standard applies in every Argument.

Issue preservation: Appellee/Respondent mother preserved her objections on the record and in an Answer and two trial briefs on every issue within this Brief On Appeal.

A. THE JUVENILE CODE DOES NOT PROVIDE ANY AUTHORITY TO FOR THE TRIAL COURT TO ALLOW AN ALLEGED PUTATIVE FATHER-- WITHOUT OR WITHOUT THE PRESENCE OF A LEGAL FATHER-- TO REQUEST A PATERNITY DETERMINATION.

The Juvenile Code is silent on the issue of paternity determination. No distinction is made between legal fathers and putative fathers. The Juvenile Code functions in a child protective proceeding to adjudicate allegations that those who are parents, or who stand in a position of parental responsibility, or in a care taking role,such as a guardian, have breached that responsibility. MCL 712A.2b.

Authority to expand the authority of the Juvenile Court in a statutory proceeding to make a judicial determination of paternity through the use of court rules is not authorized in Michigan jurisprudence. Subject matter jurisdiction is the power of the court to exercise its judicial power over that class of cases before it. Joy v. Two -Bit Corp, 287 Mich 244, 253-254; 283 NW 45(1938). Michigan jurisprudence has never interchanged actions under the Paternity Act with those under the Juvenile Code in a child protective proceeding. The class of case allowed to be litigated under each statute is entirely different. The Paternity Act is a statute with a stated purpose to ensure that out-of- wedlock children receive support, and thus because of that purpose a putative father may file a complaint to determine paternity..Preamble to The Paternity Act, PA. 1956 No. 205, MCL 722. 711 et seq; . Syrkowski v.Appleyard, 420 Mich 367,374 (1985).

Child protective proceedings are not an offshoot of, or an alternative forum for paternity proceedings. They are proceedings with a specific goal- child protection. Blatant disregard of that purpose in the Wayne County Family Court in the tragic and landmark case, In re AMB, resulted in the death of a child when the family court prior to taking jurisdiction terminated life support for the child it was supposed to protect. Out of the tragedy came a comprehensive

appellate analysis of the purpose and function of the Juvenile Code and Juvenile Court Rules in child protective proceedings. In the Opinion, Judge Whitbeck carefully scrutinized the role of subject matter jurisdiction and allegedly neglected children. In re AMB, 248 Mich App 144, 165-167 (2001). The class of cases that the Juvenile Court is empowered to hear and the purpose of hearing those cases involve a breach of duties by those with a pre-existing legal responsibility to children, to wit:

> the Juvenile Code, MCL 712A.2b, specifically grants the family courts subject matter jurisdiction of cases concerning children under eighteen years of age, if among other factors, the child's parents or guardians are neglectful as defined in subsection 1 or have failed to provide a fit home as defined in Subsection 2. AMB, supra at 166-167.

Similarly, this Court concluded in In re Hatcher, the definitive case on subject matter jurisdiction in child protective proceedings, concluded that subject matter jurisdiction is given to the Juvenile Court when the allegations in the petition cause the court to believe that the child's parent or guardian have failed either to provide a fit home or committed other conduct described in the Juvenile Code. In re Hatcher, 443 Mich 426, 433-435 ; 505 NW2d 834 (1993). Thus, in neither of the two outstanding cases on the subject is there appellate authority that the Juvenile Code can be stretched to charge persons with no legal connection to a child with failing to provide a proper home for those children or otherwise neglecting them. The petitions in the instant case are especially ludicrous as neglect allegations. The Co-Petitioners allege that that despite Richard Jefferson being the legal father for all the children, the two named putative fathers plus the John Doe fathers have failed to assert or establish paternity. {App. 13a-14a, Paragraphs X,Y,Z). Conduct, such as failure to become a legal father to children born to a mother married to another, is not

conduct of the type which is actionable under the Juvenile Code. The allegations against named and unnamed fathers accuse them of failing to do something which the law prohibits. Out of those legally-insufficient allegations, which should have been dismissed at the preliminary hearing, the Juvenile Court in this case has been converted as a forum for child protection into an avenue for pursuing paternity.

Calling an individual a respondent on a petition when that individual has no duty toward the subject child does not expand the jurisdiction of the Juvenile Court, or rather it should not, because in the instant case, it has served to do exactly that. Had the Intake Referee understood the concept that a putative father has no parental duties until he becomes a legal father, then the petitions would have been dismissed against Lagrone and Herron and the John Does In re Gillespie,197 Mich App 440,44-446(1992). Instead, the original and two amended petitions have all charged named and unnamed putative fathers with child neglect.

At the pretrial, the next hearing officer, Referee Twila Lee, grasped the legalities and tried to head in that direction of adjudicating on multiple fathers. {App. 16a}. Ironically, when most individuals are charged with a negative act- such as a crime, or civil child neglect- the goal of the defense is dismissal from the charging document. The two named putative fathers in this case, Herron and Lagrone, chose to remain within this case and have never requested dismissal off the petitions. The Defense, especially for Lagrone, became the offense; the allegations were not viewed as charges to be countered, but as an opportunity to obtain paternal rights. When the trial granted Larry Lagrone's motion to be declared the legal father, it did so despite the obvious fact that Michigan Legislature did not create or designate child protective proceedings

for that purpose.{App. 9a 15a}. In re Hatcher, supra.

The Court as early as the intake level should have dismissed them based on the fact that neither father was ever a legal one. AMB, supra at 174;. Gillespie supra, at 446. A preliminary inquiry or preliminary hearing at the intake level should be not be a perfunctory proceeding. MCR 5962,MCR 3.965; MCL 712A.13a(2);Hatcher supra at 437-438. A pro forma examination of the petition in this case, however, should have resulted in striking the allegations against any putative father, including the John Does, also ridiculously alleged not to have acknowledged paternity. {Id}. Rather than acting as an appropriate filter to allow authorization of only legally-sufficient petitions under the Juvenile Code, the intake screen in this case had a hole so large that it allowed paternity predators, particularly Lagrone, to usurp the very purpose this case should have.

This case quickly and unfortunately became about their alleged paternity rights despite the fact that the Juvenile Code does not furnish the trial court in a child protective proceedings with extra subject matter jurisdiction for paternity determinations. Thus, it is not just a question of whether the putative fathers have standing in a particular case, but a question of dealing with the ultimate issue-whether the Juvenile Code contains any statutory authority to entertain requests to ascertain paternity or to adjudicate allegations in neglect petitions accusing putative fathers of failing to perfect paternity. As Justice Whitbeck pronounced, "Subject- matter jurisdiction is so critical to a court's authority that a court has an independent obligation to to notice when it lacks such jurisdiction even when the parties do not raise the issue." AMB, supra at 166-167.

While in AMB, the trial court viewed the putative father as a legal non-person

denying him the one right he may have had-to get notice prior to the court terminating life support, the trial court in this case has granted Lagrone and Herron rights which the court had no authority, or subject matter jurisdiction, to grant. It has allowing them to participate in the proceeding, appointed them trial and appellate counsel, and even prior to any trial basically terminated Richard Jefferson's parental rights as legal father at the request of Larry Lagrone.{Id, and App. 8a}.

Although child protective proceedings brought under the Juvenile Code are a vehicle suited for a narrow legal purpose clearly evident in the title of the proceeding, the putative fathers frequently hijack the vehicle and take it down the wrong legal road. These hijackings could often be curtailed if at the intake level, prior to the neglect petition being authorized, the intake referee ascertained whether the children had legal fathers. If so, petitions should not be authorized with allegations against alleged biological fathers, who in turn then get appointed counsel who steer, under the color of court rules, the proceeding onto in the wrong direction. In re CAW, the putative father only fought vigorously for his "rights" post-termination of the legal father. Frequently, a "putative" father is named, however, as a respondent in the original petition along with a legal father of the same subject child--which is exactly what happened in the instant case. Armed with legal counsel, the putative fathers in this case have driven the trial court away from neglect adjudication into paternity determination, with the ultimate result of subject matter abdication.

Subject matter jurisdiction in a statutory proceeding should be able to be gleaned from the wording of the Juvenile Code just as this Court in Syrkowski v Appleyard looked to see if the Paternity Act to see if the circuit court had subject matter jurisdiction in an artificial insemination case. 420 Mich 367; 36 NW2d

211 (1985). A trial court has subject matter jurisdiction to hear a case if the law has given the court the authority to grant the relief requested by the parties. Altman v Nelson 197 Mich App 467; 495 NW2d 826 (1992). The Juvenile Code does not have subject matter jurisdiction for paternity pursuits.

B. THE JUVENILE COURT RULES PROHIBIT THE TRIAL COURT FROM TAKING AN ACTION REGARDING A PUTATIVE FATHER IF A LEGAL FATHER EXISTS.

The only guidance in a child protective proceeding as to putative fathers is in the Juvenile Court Rules. By definition, court rules are there to provide procedure for trial courts and in this specific instance, procedure to follow in a statutory proceeding with a narrow purpose of child protection, and court rules do not exist to endow the trial courts with powers not given to courts by the Legislature. As the Court of Appeals exclaimed In re Gordon Estate 222 Mich App 148, 154-155 (1997):

> Generally, the Supreme Court's rule-making power is constitutionally supreme in matters of practice or procedure. Const 1963, art 6 } 5. However, the Supreme Court's rule-making power is supreme in matter of practice and procedure only when the conflicting statute embodying putative procedural rules reflects no legislative policy consideration other than judicial dispatch of litigation. 3 Honigman & Hawkins Michigan Court Rules Annotated (2ed, p 404; *Kirby v. Larson*, 400 Mich 585, 598; 56 NW2d 400 (1977) (WILLIAMS, J.). Thus, while purely procedural matters are constitutionally delegated to the Supreme Court, a court rule promulgated by that Court cannot intrude upon substantive legislated policy matters such as the restriction or expansion of the jurisdiction of the probate court. *In re Hillier Estate*, 189 Mich App 716, 719; 474 NW2d 811(1991); see also *In re Kasuba Estate,* 401 Mich 560 566; 258 NW2d 731 (1977) (the Supreme Court cannot expand the jurisdiction of the probate court without legislative consent).
>
> {italics in original; underlining added}.

Though faced with a wall of appellate authority forbidding court rules to expand the purpose of a proceeding without a statutory foundation, the Juvenile Court in this case has found a way over the wall by using the Juvenile

Court Rules to give it powers in paternity never contemplated even in the Juvenile Court Rules, much less the Legislature. The trial court started off by ignoring the pre-existing condition for even reaching any putative father inquiry. MCR 3.921(C)(1) allows the court to take testimony "on the tentative identity and address of the natural father," but that is only after the trial court has determined that there is no one who fits the legal definition of father under MCR 3.903(A)(7) , as stated in MCR 3.921:

> **(C) Putative Fathers.**
>
> If, at any time during the pendency of a proceeding, the court determines that the minor has no father as defined in MCR 3.903(A)(7), the court may in its discretion take appropriate action as described in this subrule. {bold in original, underlining supplied}

Hence a trial court can only look into a putative father if a legal father is lacking, and the trial court has discretion, not a duty, to take what the rest of the court rule deems is appropriate action. No where does the "appropriate action" described therein include determining that a certain man is a legal father. Rather, that subrule allows the trial court to ascertain the identity of the putative, father and send him notice, or it can send notice by publication to an unknown putative father. MCR 3.921(C)(1). After providing notice, (C)(2) then provides a procedure for the trial court to make specific findings, not about substantive paternity issues as to certain individuals, but as to issues surrounding a certain individual's willingness to become a legal father, whether another person may be the putative father, or if the identity of the biological father is likely to remain unknown. MCR 3.921(C) (2) lays down a narrow path and a specific route for the trial court to follow:

> (2) After notice to the putative father as provided in subrule (D)(1), the court may conduct a hearing and determine that:

(a) the putative father has been personally served or served in some other which the court finds to be reasonably calculated to provide notice to the putative father. If so,the court may proceed in the absence of the putative father.

(b) a preponderance of the evidence establishes that the putative father is the natural father of the minor and justice requires that he be allowed 14 days to establish his relationship according to MCR 5.903(A)(4); providing that if the court decided the interest of justice so require it shall not be necessary for the mother of the minor to join in an acknowledgement.

(c) there is probable cause to believe that another identifiable person is the natural father of the minor. If so the Court shall proceed with respect to the other person in accord with subrule (C).

(d) after diligent inquiry ,the identity of the natural father cannot be determined. If so the court may proceed without further notice and without appointing an attorney for the unidentified person.
{emphasis added}.

Not one portion of any provisions of MCR 3.921(C)(2) applies if the condition in MCR 3.921- that the child does not have a legal father-is not met. Thus, when the trial court agreed at the request of Larry Lagrone's counsel to take testimony from the mother pursuant to MCR 3.921(C)(2), the trial court erred, and expanded its authority under the Juvenile Court Rules.{App. 22a-23a}. The trial court apparently forgot that the entire subrule entitled "**Putative Fathers**" is available to it in the absence of a legal father. Even then, the Juvenile Court has within the court rule, limited access on the road to paternity. No where does MCR 3.921(C) instruct the trial court that it can hand a putative father standing and/or find legal paternity. Rather, if the trial court reaches the level in the putative father process where it finds probable cause of biological paternity of the putative father, MCR 3.921(C)(2)(b), all that the hearing officer is empowered to do is signal to the alleged biological father that he has a short time to drive onto the road to paternity determination. The rule assumes that said father must go elsewhere to perfect paternity, and contemplates voluntary

acknowledgment as evidenced by the fourteen-day time rule. Significantly the trial court is the entity who decides if it wants to notify a putative father, but then it is the putative father who then decides whether to get on that road, that is, whether to pursue a legal paternity of the child.

The Michigan Legislature, not the Supreme Court through court rules, should likewise decide if it wants paternity determinations in child protective proceedings.To date, the Michigan Legislature has not given juvenile courts any authority to determine paternity under the Juvenile Code. Any argument that the Juvenile Court Rules can be interpreted, or better put, manipulated, to give the the Juvenile Court the power to change paternity from one individual to another is constitutionally suspect when the Juvenile Code lacks even a single provision about paternity determination. Juvenile Court Rules did not even allow for the existence of any putative father in the instant case. Nonetheless, the trial court made a putative father a legal one. When there is already a legal father, the Juvenile Court Rules stop the father inquiry at MCR 3.921(C)(2), and the course of inquiry should ideally end at intake.

C. A PUTATIVE FATHER DOES NOT FALL WITHIN THE DEFINITION THE DEFINITION OF "FATHER" UNDER THE FORMER OR CURRENT JUVENILE COURT RULES, AND THEREFORE A MAN DEEMED PUTATIVE FATHER LACKS THE LEGAL RELATIONSHIP WHICH IS NEEDED TO ALLEGE THAT HE COMMITTED NEGLECT.

MCR 3.903(A)(7) [formerly and at the time the petition was filed, MCR 5.903(A)(4)] defines father under the Juvenile Court Rules. Neither Larry Lagrone nor Frederick Herron fit into any definition of "father" under MCR 5.903(A)(4) [now MCR 3.903(A)(7)}. When the Prosecutor named Larry Lagrone as a respondent, he had not been married to the child's mother, had not been named on a birth certificate, had not legally adopted any of the

minors, had not established paternity either through acknowledgment or by an order of filiation of any of the minors, nor had he or anyone else obtained a prior judicial determination that the minors he stated were his biological children were not the issue of the marriage. The same was true of Frederick Herron and the John Doe respondents. Therefore,at the time of filing the original petition, no putative father was considered a father under the Juvenile Court Rule which defined father. MCR 5.903(A)(4) [now MCR 3.903(A)(7)].

D. STANDING UNDER THE JUVENILE CODE WAS NOT AFFORDED TO A PUTATIVE FATHER UNDER THE FORMER JUVENILE COURT RULES FATHER BECAUSE A PUTATIVE FATHER DID NOT FIT INTO THE DEFINITION OF "PARENT" UNDER MCR 5.903(A)(12) AND CONSEQUENTLY DID NOT FALL WITHIN THE DEFINITION OF "INTERESTED PARTY" UNDER MCR 5.903(A)(13)(b).

When this case was brought in 2002, MCR 5.903(A)(12) defined "parent" for purposes of any proceeding brought under the Juvenile Code, supra.

> "Parent" means a person who is legally responsible for the control and care of the minor, including a mother, father, guardian, custodian, other than a custodian of a state facility, a guardian ad Litem, or a juvenile court-ordered custodian. {emphasis added},

MCR 5.903(A)(12) has been changed in the new court rule, MCR 3.903(A)(17) to wit: "Parent" means the mother, the father as defined in MCR 3.903(A)(7) or both of the minor. {emphasis added}.Neither Larry Lagrone nor Fredrick Herron fit the definition of "parent" under the former or revised definition. Under the former Juvenile Court Rules, the failure of a putative father to fall within the definition of parent denied a putative father standing. He may have had a right to notice, but he would still have lacked standing.

MCR 5.903(13)(b), the previous court rule, defined "party" for purposes of a child protective proceeding:

"Party" includes the
(b) petitioner, child, respondent parent,or other parent or guardian in a child protective proceeding.

Because a putative father could be defined as a "parent," under MCR 5.903(A)(13)(b), Larry Lagrone could not haven been an interested party as defined in the former Juvenile Court Rules, and thus as as putative father lacked standing in child protective proceedings. The former court rules made perfect sense as the goal of a child protective proceeding is to protect a child by alleging that the persons responsible for the child's care failed to provide it. MCL 712A.2b

To summarize, the act of merely naming the alleged biological father as a respondent as did the Prosecutor in this case did not confer standing on Larry Lagrone and Frederick Herron because standing was also regulated by a *specific* court rule. Thus, a putative father by virtue of an allegation that he fathered a child is not a party to a child protective proceeding because he was not a legally responsible as a parent. In re Gillespie ,supra at 443- 444. In Gillespie, the Court of Appeals held that naming a putative father as a respondent did not endow him with any rights, and thus, he was not even entitled to notice of the initial petition.His failure to become a legal father meant that he did not fit into any definition of father under MCR 5.903(A)(4). Notably in Gillespie, there was no legal father, but even then the putative father was not found to be a proper respondent. Supra, at 446. In the instant matter where the children had a legal father, Richard Jefferson, the argument that no standing can ever be afforded to a putative father becomes even more convincing. If a putative father fell into another category of party, such as being a legal guardian, he would arguably have standing, but not based on assertion of probable biological paternity, but based on a previously- determined legal

relationship to the minor where he stood in loco parentis.

Just being called "putative father" and named as "a respondent" did not confer standing under the former Juvenile Court Rules, which were in effect when this case originated. Thus the argument made by the Assistant Prosecutor John Taylor to Judge Young that the putative father Larry Lagrone or Fredrick Herron were suddenly endowed with rights as a parent ripe for termination -was severely flawed.{App 6a-7a}. No authority ever existed in the Juvenile Code to endow a putative father with standing without or without a legal father. Further, the version of the Juvenile Court Rules when this case began directly precluded a putative father from standing. Under the current version of the court rules, MCR 3.903(A)(18)(b), a respondent can have standing but a putative father is not a proper respondent. Gillespie ,supra at 446.

E. UNDER THE CURRENT JUVENILE COURT RULES, A DEFINITION OF PUTATIVE FATHER HAS BEEN ADDED WHICH PRECLUDES ANY INDIVIDUAL CLAIMING PATERNITY TO BE DEEMED A PUTATIVE FATHER, AND THUS A MAN CLAIMING BIOLOGICAL PATERNITY LACKS STANDING TO REQUEST PATERNITY DETERMINATION BECAUSE HE IS A NON-PERSON LEGALLY.

The current Juvenile Court Rules altered the definition of interested party in child protective proceedings while simultaneously adding something new--a definition of "putative father." Under the current Juvenile Court Rules if a child has a legal father, then the child cannot have a putative father. '"Putative father means a man who is alleged to be the biological father of a child **who has no father as defined in MCR 3.903(A)(7).'** MCR 3.903(A)(23) {emphasis added}. Therefore, neither Larry Lagrone or Fredrick Herron can be defined as a "putative father."

Even a superficial reading of the Juvenile Court Rules yields the answer

to standing under the Juvenile Code: if a child has a legal father as defined in MCR 3.903(A)(7), no other man can ever fit into the definition of putative father under MCR 3.903(23). Therefore, the trial court in a child protective proceeding is not free to park the putative father's paternity car into the slot already taken by the legal father who already fit into a definition under MCR 3.903(A)(7). The majority opinion in In re CAW, supra gives the impression that had the biological father come forward earlier, the trial court may have been able to determine that the children were not born of the marriage,thereby making the biological father the legal one. Timing in a child protective is not relevant if a legal father exits. As to putative fathers in that instance, the trial court is precluded from even giving them a passing wave. Lacking any authority under the Juvenile Court Rules to recognize them as putative fathers and to afford them opportunity to pursue paternity in another forum through provisions of MCR 3.921(C)(1) and (2), the trial court obviously lacks authority to grant them standing.

ARGUMENT II.

NO LEGAL SIGNIFICANCE SHOULD BE ACCORDED TO THE TRIAL'S COURT'S FINDING IN A CHILD PROTECTIVE PROCEEDING THAT THE PUTATIVE FATHER IS THE BIOLOGICAL FATHER OF THREE OF THE CHILDREN.

A. APPELLANT ARGUES OPPOSITE CONCLUSIONS.

To agree with Appellant that any legal significance should accrue to the finding of the Oakland County Family Court that Larry Lagrone

is the biological father of her three children is dangerous. Part of the peril in agreeing with Appellant is being forced to accept his two opposing conclusions. Appellant first argues that the Juvenile Court's finding, under a rule governing definitions of fathers {MCR 3.903 (A)(7)}, that Larry Lagrone is biological father of three minors hands and that "his" children were not born into wedlock, is a finding which can be put to good use in a paternity action. Thus, the trial court in this case gave Mr. Lagrone a gift certificate to be cashed in, if he chooses, in another court. Mr. Lagrone has the option of purchasing an order of filiation. Because the Juvenile Court had found that Tina Jefferson's husband is not biological father, then Larry Lagrone, Appellant maintains, has been given a prior judicial determination and thus, standing to file under the Paternity Act MCL 72.714(7). In short, Larry Lagrone now has a detour around the holding of Girard v. Wagenmaker 470 Mich 231; 470 NW2d 372(1991), courtesy of the Juvenile Court, to file a paternity complaint.

In a child protective proceeding Appellant also argues, that biology can be legal destiny. No need exists for a paternity complaint, asserts Appellant, because once the trial court had received the results of the paternity blood test, it was given a pass to go directly to 3.903(A)(7)(1) to fit a new father into a definition-despite the fact that another man, Richard Jefferson, already satisfied the definition of father-, and to declare that three of the children now had a brand new legal father. The pass included the bonus provision for the trial court, which was free to ignore 3.921(C)(2), a rule which only allows the court to inquire about a putative father in the absence of a legal father. The ultimate result of the trial court's finding of biological paternity, according to Appellant, was that Larry Lagrone had court-sanctioned legal standing in the child protective proceeding. Appellant offers no explanation how the trial court is

even allowed to determine biological paternity, much less legal paternity.

To follow Appellant's argument is to enter a legal house of mirrors. On the one hand, Appellant reasons that the finding of biological paternity for the three children in this case still does not give Larry Lagrone any status as a legal father under the Juvenile Court Rules because he still needed to file a complaint under the Paternity Act. Hence, Larry Lagrone prior to obtaining an order of filiation would still presumably lack standing in the child protective proceeding because he would not have established a legal connection to his biological offspring.

In his second sub-argument, Appellant mysteriously concludes the opposite. In sub-argument two, Appellant agrees that Juvenile Court can directly grant a putative father standing. A finding of biological paternity becomes highly significant, argues Appellant, because because the biological father can request, and the trial court can make a finding of legal paternity. His argument implies that the trial court is justified, under MCR 3.921(C)(2), to take testimony and use it to make a finding of biological paternity. Actually, MCR 3.921(C) is only available to the trial court if the child does not already have a legal father. Even in the absence of a legal father, the trial court can only make *probable cause* finding that someone is a natural father. {See this Appellee's Argument I (B)}. Appellant reasons, as did the majority opinion in In re CAW, supra, that MCR 3.921(C) [formerly MCR 5.921(D)] is an intervention rule available to be used by putative fathers, rather than a notice rule whose use is discretionary with the court. Appellant in his second point blesses the Juvenile Court in a child protective proceeding not only with authority to pick and chose which court rules it chooses to follow and when, but with the ultimate authority to determine paternity in court of law. Consequently, the putative father because

the trial court has bought into the judgment in a Paternity Act case.

B. ALLOWING ANY LEGAL SIGNIFICANCE TO ATTACH TO THE TRIAL COURT'S FINDING OF LAGRONE'S BIOLOGICAL PATERNITY WILL CAUSE CHAOS IN FAMILY LAW.

Appellant's two opposite conclusions- that the Juvenile Court's finding of biological fatherhood is only significant if father chooses to file a paternity, or that a biological father can be made a legal one with standing by the Juvenile Court Judge- are both specious. If either is validated by this Court, the chaos theory not only be a theory in the discipline of physics, but a reality of family law. To understand why Appellant's arguments threaten to create confusion through the realm of family law, it is necessary to understand why Larry Lagrone and Frederick Herron were named on the original and two amended petitions, and why the Prosecutor argued to include them as respondents.

This matter came before the trial court as a petition to terminate parental rights, and the Family Independence Agency views a permanent wardship petition as litigation to clear legal title to children. Once the rights of existing or potential "parents" are obliterated, title to the children will pass to FIA free and clear. Most children in permanent wardship proceedings become wards of Michigan Children's Institute, ie. state wards as opposed to becoming permanent court wards. The children then become FIA property, and it takes the consent of the Michigan Children's Institute to form a new family with few exceptions. MCL 710. 21 et seq;(with the exception being prevailing in a Section 45 hearing, MCL 710.45). The Family Independence Agency for years has believed that the trial court cannot commit children to Michigan Children's Institute unless the "rights" of all fathers-legal, named putative, or alleged John Does- have been terminated along with that of the mother. That is why the petitions in this case charge Richard Jefferson as a legal father, two named

putative fathers, and John Does. {App. 13a-14a}. FIA policy often lacks legal rationality.

This policy is based on the mistaken theory that fathers other than legal ones have any substantive parental rights to terminate when a legal father exists. Established case law holds the opposite. Putative fathers-with or without a legal father in the picture-have no inherent parental rights. AMB ,supra at 174; Gillespie, supra at 443-446; In re NEGP, 245 Mich App 126, 134: 626 NW2d 91 (2001). The distinction between a legal father and putative father is of the utmost legal significance. In contrast, the distinction being made in this case between a legal father and alleged, or proven, biological father should have no legal significance beyond this appeal.

To buy into either of Appellant's arguments as to why a biological finding in juvenile court has legal significance is to encourage unjust intrusions into fundamental family relationships while creating a legal tidal wave of problems. "The family entity is the core element upon which modern civilization is founded .Traditionally ,the integrity of the family unit has been zealously guarded by the courts." Reist v. Bay Circuit Judge, 396 Mich 326 ,342 ,quoting In re Luscier, 84 Wash 2d 135; 524 P2d 906 (1974). When the courts let down their guard about intact families, giving more weight to biology than public policy, instability is the looming consequence. Permanency for children is not going to achieved quicker. Endless trial and appellate issues will arise. For example, the Prosecutor could now amend his petition to make Larry Lagrone the sole legal father of his three biological children based on the trial court finding he can be the substitute father under Montgomery,supra But, the practical problem which arises is what to do with the legal rights of Richard Jefferson. If a trial court in a child protective proceeding is allowed to find that biological paternity throwing

out one legal father for another, then are the parental rights of the first legal father summarily terminated in a hearing on a motion by a biological father? A finding by the trial court in this case that one legal father can be replaced by another based on biology legal father, then serves to deny the first legal father his substantive and procedural due process rights? Reist, supra 341-342.

Moreover, if an original legal father is now replaced by another legal father based on biology,what happens to support obligations? Is Larry Lagrone now responsible for supporting his biological children? Does FIA chase after Richard Jefferson or Larry Lagrone for past welfare reimbursement? Does Oakland County Family Court Reimbursement Department bill the first or second legal father for the cost of foster care? Is Richard Jefferson liable for foster care up to the time of Judge Young's opinion? All of those issues could create havoc if this Court allows any legal significance to derive from the trial court's finding of biological paternity. "There is no area of law requiring more finality and stability than family law," wrote Justice Boyle in a case where at issue was overturning a paternity decision in a divorce years later. Hackley v. Hackley ,426 Mich 582, 598 (1986). Granting legal significance to the trial court's finding by sustaining Appellant's Argument on Issue Two can only have an adverse effect on Michigan jurisprudence.

ARGUMENT III.

THE JUVENILE COURT RULES DO NOT PROVIDE GREATER STANDING TO A PUTATIVE FATHER THAN PROVIDED IN THE PATERNITY ACT BECAUSE THE JUVENILE COURT RULES DO NOT PROVIDE ANY STANDING TO A PUTATIVE FATHER.

A. THE WORDING OF THE QUESTION ASSUMES INCORRECTLY THAT COURT RULES CAN EXPAND STATUTORY AUTHORITY AND THAT

A PUTATIVE FATHER HAS ANY STANDING IN A CHILD PROTECTIVE PROCEEDING.

For two reasons ,Appellee Mother objects to the wording of this Court's Issue No.3: "Do the Juvenile Court Rules provide greater standing to a putative father than does the Paternity Act?" First, Appellee finds no appellate authority that court rules can be used to expand the powers of the trial court. {See Appellee's Argument I}. Second, the Juvenile Court Rules have never provided standing to putative fathers.

The word "greater" in the Court's Question assumes that standing exists for putative fathers in a child protective proceeding because the Juvenile Court Rules can be used to create standing. The Juvenile Court Rules are not an affirmative action program for putative fathers. If their claims of paternity are not meritorious elsewhere, why are they given points in the paternity admission process by named as respondents in a child protective proceeding? Apparently, once a petitioner names putative fathers as respondents, the debate changes from whether or putative fathers have any rights to which part of the law gives them greater rights, that is greater standing. Appellee marvels that a legally insufficient petition- charging the putative fathers with neglect for failing to become legal fathers when they have no standing in any forum- can elevate the discourse to a comparison of standing rights in two separate forums.

Neither the petitioner, nor the trial court cannot create standing for a putative father in a child protective proceeding. AMB, supra 174; Gillespie, supra 443-446 ,NEGP, supra 134. When this case began, the former court rule MCR 5.921(C) was in place- a rule which did not permit a trial court to look for a putative fathers if there was already a legal one. Although the Intake Referee

ignored that court rule, the pretrial Referee initially tried to enforce that rule and consequently informed the attorneys for Herron and Lagrone that the Court's inquiry would stop at the proof that Richard Jefferson was the legal father. {App. 16a}. MCR 5.921(C) has been re-numbered into MCR 3.921(C) with the same language remaining. Hence under either the former or current Juvenile Court Rules, the trial court was not free to ascertain that an individual man fit the description of putative father if a legal father already existed. If the trial court was not allowed to name a putative father under the court rules, how can there be any argument that a putative father has standing under those same court rules?

The trial court slid into standing quicksand when it took testimony unnecessarily from the mother and then allowed the putative fathers to remain on the petition and in the case. The trial court should have slammed the door on the two named putative fathers as well as the John Does and removed their names from the petitions once it was convinced that Richard Jefferson existed. The pretrial Referee at first tried to do that; the Judge wanted to do that, but the named putative fathers kept their feet in the door by asserting their "rights" and thereby delaying adjudication and permanency.

The trial court was forced to deal with named individuals as putative fathers not because it wanted to disobey MCR 3.921(C)(2), but because the Co-Petitioners filed three petitions all of which named both a legal father for all the children and two putative ones for children who already had a legal father. The Co-Petitioners usurped of the trial court's role as proscribed MCR 3.921(C). Just an in In re Gillespie, the act of naming a putative father as a respondent did not give him standing, the trial court should have realized that fact in this case rather than treating each of the named putative fathers as if each already had

standing. Gillespie, supra at 443-446. Although the trial court should not have had to venture into the putative father arena under MCR 3.921(C), and although the trial court was forbidden to use that rule if a legal father existed , the Co-Petitioners pushed the trial court into a forbidden area by naming Lagrone and Herron as respondent putative fathers.The trial court compounded the Co-Petitioners' error even at the intake level by appointing them counsel and refusing to recognize that the allegations against them were legally insufficient. As this Court noted in Hatcher, jurisdiction originates in filing of a legally-sufficient petition under the Juvenile Code. Hatcher, supra at 437-438. Because the trial court lacked subject matter jurisdiction to hear the allegations against the putative fathers in this case, putative fathers could not have standing.

This Court gives the impression that at some point, one of the named putative fathers,Lagrone, validly obtained actual standing under the Juvenile Court Rules, and that his standing could be compared to that under the Paternity Act. *No matter what happens in a child protective proceeding, putative fathers do not have standing under the Juvenile Court Rules.* AMB supra at 174. If the child has a legal father, the trial court does not even discretion to determine that notice needs to be sent to a putative father. MCR 3.921(C). If the child does not have a legal father, the putative father, if one exists, is not handed standing through a notice rule.

Under either version of the Juvenile Court Rules, *if and only if the child does not already have a legal father,* the Court could in its discretion, using MCR 3.921(C)(1), attempt to ascertain that a certain man could possibly be the putative father and have him served with notice. Only then could after notice,could the trial court make a finding of probable cause that the identified

putative father was the "natural" father, but then despite the title of putative being taken a further step to "natural," that individual is not given standing, but fourteen days to establish his relationship. MCR 3.921(C)(2)(a) and (b).

To summarize,whether the children have a legal father or no legal father when the case originates, a putative father has no standing under the Juvenile Court Rules. The trial court assumed and this Court has apparently assumed that a putative father is any man whom someone alleges is the biological father of the children. The new Juvenile Court Rules, which became effective May 1, 2003, for the first time define "putative father" no longer allow that assumption. ' '"Putative father" means a man who is alleged to be the biological father of a child who has no father as defined in MCR 3.903(A)(7).' MCR 3.903(A)(23). Any legal analysis comparing which gives a putative father greater standing -the Juvenile Court Rules or the Paternity Act should become simpler. Now, even when a petitioner now designates someone as "a putative father" in a petition, if the child has a legal father, there cannot be a putative father.

Therefore, a person who does not exist legally under the Juvenile Court Rules cannot have any standing under them. In the context of a child protective proceeding, standing comparison between the Juvenile Court Rules and the Paternity Act appears to have no application. To answer the Court's question, however, Appellee reasons that Girard would preclude that same " putative" father from having standing under the Paternity Act. Girard, supra. Thus, the response to the Court's question is that the Juvenile Court Rules do grant "greater" standing than does the Paternity Act to a man who produces a child born during the mother's marriage to another man. That biological father has no standing under either court rules or statute. It does not matter what percentage one takes of zero, the answer is always the zero. Neither the

Juvenile Court Rules nor the Paternity Act provides any standing to a father in the position of Larry Lagrone.

B. MCR 3.921 IS A NOTICE RULE, NOT A STANDING RULE NOR AN AN INTERVENTION RULE.

Standing and notice are two different legal concepts, but are continually confused when it comes to the issue of putative fathers. The stepchild of standing is the right of intervention, and the Appellant assumes an additional third person can intervene as a party because said person has parental status or potential parental status. The Juvenile Court Rules are specifically for proceedings under the Juvenile Code unless otherwise indicated, to wit:

RULE 3.901 APPLICABILITY OF RULES

(A) Scope

(1) The rules in this subchapter, in subchapter 1.100 and in MCR 5.113, govern practice and procedure in the family division of the circuit court, in all cases filed under the Juvenile Code.

(2) Other Michigan Court Rules apply to juvenile cases in the family division of the circuit court only when this subchapter specifically provides. {bold in original}.

No Juvenile Court Rule exists allowing for intervention under the Juvenile Code in child protective proceedings. {Entire Juvenile Courts as specified in MCR 3.901(B)(1) and (4),.with one arguable exception *limited* intervention by an Indian tribe to request a transfer of jurisdiction. MCR 3.980(A)(3)}. This lack of a procedure for intervention under the Juvenile Court Rules, stands in stark contrast to the general court rules. Those court rules contain a specific rule- MCR 2.209 entitled **"Intervention"** - which provides specific procedures for persons to intervene and distinguishes between intervention by right or by permission. In addition to MCR 2.209, designated proceedings, such as in

contested probate claims, have a specific court rule regulating intervention. MCR 5.120. It is difficult to conclude that MCR 3.921(C)(2)(b) is a court rule controlling "intervention" in a child protective proceeding when it is not labeled as an intervention rule, but as a "persons- entitled- to-notice" rule. No where in the entire rule of MCR 3.921{MCR 5.921} does the word "intervention" appear.

Moreover, how does a Juvenile Court Rule, called **"Persons Entitled To Notice"** magically become a rule used to grant standing to a putative father? The magic long practiced by trial and appellate courts to pull a standing rabbit out of a notice hat took place by waiving the court's wand over the actual standing rule MCR 5.903(A)(13)((b) ,[now MCR 3.903(A)(18)(b)] and making that rule disappear. That magic disappearance of the actual standing rule resulted in In re Montgomery, supra. When the legal father in that case did not appear for trial because the Prosecutor forgot to writ him out of prison, the trial court made the standing rule vanish, and pulled the putative father out of the notice hat. The trial court then terminated the parental rights of the putative father, who ironically had no parental rights. AMB, supra at 174 ; In re Gillespie, supra, 443-446. The Court of Appeals, impressed with the trick, affirmed the termination. The trial court in the instant case was not spell bound, but felt appellate bound by that decision.

A court of law should not be run on magic, but on logic. The logical reason as to why MCR 3.921(C) has within it a procedure for ascertaining the identity of putative fathers is not to provide a procedure for, or necessarily encourage, "intervention," but to comply with the Constitution. As the Michigan Court of Appeals noted in In the Matter of B.K.D.,246 Mich App 212, 221-222 (2000), several key United States Supreme Court cases establish the constitutional rights of fathers of *illegitimate* children to be afforded procedural due process

when a custodial relationship exits. BKD, supra, citing Caban v Mohammed, 441 US 380; 99 S Ct 1760; 60 Ed 2d 97 (1976), and Stanley v Illinois, 405 US 645; 92 S Ct 1208, 31 L Ed 2d 551 (1972). The state under those two cases, as the Court of Appeals noted in B.K.D. supra, may have far less stringent standards for terminating the rights of the father of an illegitimate child than those for terminating the parental rights of the mother or a married father. BKD, supra. No constitutional due process is denied when a state's statutory scheme does not attribute a liberty interest to a biological father when the child has legal father. Michael H. v. Gerald D, 491 S 110,113; 109 S.Ct. 2333; 105 L E2d 91 (1989).

In Michigan, the putative father is only allowed to come forward to establish legal paternity in the absence of a legal father and within an appropriate forum. Girard, supra. If a legal relationship with his biological offspring is established, then and only then does he have standing as a father in a child protective proceeding. The MCR 3.921(C)(2)(b) and (3)(b) contemplates that the biological father will on his own take a step to create a legal relationship out of an alleged biological one, or will be free to chose not to become a father voluntarily. His avenue is not limited to his filing a complaint under the Paternity Act, supra. He could file, for instance, an Acknowledgment of Paternity. MCL 72.1003-1005; MCL 333.2824. Frankly, the time limit of fourteen days placed into MCR 3.921(C)(2)(b) seems to indicate the route he is expected to take. If he chooses to file a complaint under the Paternity Act, the Juvenile Court Rule is amenable to the father requesting a finding of good cause exists to extend the fourteen day deadline. MCR 3.921(2)(b). Even if he failed to volunteer to become a legal father, another person such as the mother, or the state in limited circumstances,could file a

complaint against him under the Paternity Act. MCL 722.714(1)and (4).

If he becomes a legal father, then he will have standing as interested party whether or not he is named as a respondent. That standing is not by virtue of the notice rule of MCR 3.921(C), but because in another forum, he became a parent of an alleged neglected child to whom he would have a duty and he would then possess a liberty interest in the care and custody of the child. MCR 3.903(A)(18)(b); MCL 712A.2b; Reist, supra.

Thus, 3.921(C) (2) is not a standing rule, and certainly not an intervention rule. The entire court rule MCR 3.921 lists what category of persons and in what types of hearings, the trial court may or shall direct notice. The fact that the Juvenile Court directs service under that rule should not be interpreted to mean that standing can granted pursuant to the rule in a juvenile court proceeding or in another forum. If the court directs service upon a foster parent for a permanency planning hearing, pursuant to MCR 3.921(B)(2), that foster parent does not gain standing in the child protective proceeding, or in a custody action. Tallman v. Milton.192 Mich App 606, 61; 482 NW2d _(1992). Likewise ,MCR 3.921(C)(2) is not a standing rule. It is there to instruct the trial court as to when and if it has to give notice to a putative father. Not one word in that subrule states that after notice is given to an identified putative father, the trial court is free to place him in the family who is subject of the proceeding.

Even when the trial court finds probable cause that a certain putative father is "the natural father" under MCR 3.921(C)(2)(b), a biological connection magically transform a notice rule to a standing rule. When the Juvenile Court hearing officer finds probable cause that a putative father is a biological one, the hearing officer now has to wait for something to happen outside of the child protective proceeding. MCR 3.921(C)(1),(2) and (3) imposes a scheme and a

procedure regarding notice to a putative father. Each step until the ultimate one is within control of the Juvenile Court Rule-the notice under subsection (1) and the findings under Subsection (2). Then the Court waits for the natural father to take a step, or arguably for someone else to file for paternity. The Court can turn to subsection (3) and deny the individual any more interests in the proceeding if he his not taken advantage of his window of opportunity. The Juvenile Court can give the natural father a window, but the door to actual paternity is not in the child protective arena. No where does MCR 3.921(C) tell the hearing officer that the Juvenile Court can turn a probable cause finding of a "natural father" into a legal finding of paternity under MCR 3.903(7).A potential, or even DNA-proven, biological connection to the subject child in a child protective proceeding of a father to a child does not expand the trial court's authority under a Juvenile Court Rules, when the rules do not grant that authority Therefore, a putative father has no standing under the Juvenile Court Rules, whether or not the child has a legal father. Hence, the Juvenile Court Rules do not provide greater standing than the Paternity Act.

C. THE STATE BY NAMING PUTATIVE FATHERS AS RESPONDENTS AND ALLEGING THAT SAID RESPONDENTS HAVE SO NEGLECTED THEIR CHILDREN HAVE THEIR " PARENTAL RIGHTS" SHOULD BE TERMINATED, HAS WRONGLY CREATED THE ILLUSION OF STANDING FOR PUTATIVE FATHERS.

Co-Petitioners have added a smoke screen to the slight of hand arguments of Larry Lagrone. Larry Lagrone and Frederick Herron were allowed to waste public resources because the Co-Petitioners charged them as respondents because of their alleged "putative father" status, which the Juvenile Court Rules prevented them from having. {Appellee's Arg.I(C) and (D). Even if the children in this case had not had a legal father, neither Larry

Lagrone nor Frederick Herron had any parental rights to terminate. If there had not been a legal father in this case, they could have been given notice at the court's discretion. MCR 3.921(C) and (D). Once given notice, their rights at most amounted to procedural due process depending on the circumstances. In the Matter of AMB, supra,208-211, MCR 3.921(C)(2)(b).

Once Co-Petitioners allege a legal duty existed where none did, then the state contributed to the illusion that Larry Lagrone and Frederick Herron had standing. FIA continually ignores the Juvenile Court Rules and invades the province of the trial court by alleging that a certain putative father is neglectful. The Prosecutor's office gets dragged into doing what its client, or co-petitioner wants. Before someone can legally neglect a child, that someone has to have a legal duty to the child.Gillespie, supra at 443-446. Thus, a proposed guardian of a minor in theory cannot be charged with neglect; an appointed guardian of a minor can.

Thus, if the state wants to charge a "putative" father with neglect, it should ensure that said individual has a legal duty to the child. In the case at bar, insufficient allegations of neglect were made under MCL 712A.2b: MSA 27.3178(598.2b) to reach a threshold for taking jurisdiction by a preponderance of evidence, and yet the state sought to terminate the "rights" of Larry Lagrone and Frederick Herron under MCL 712A.19b; MSA 27.3178().-which requires an even higher burden of proof. See MCR 3.977(E) entitled "**Termination of Parental Rights at the Initial Disposition**, both burdens applied}.

A determination of that a man actually has paternal rights should precede a request by the state for termination of those paternal rights. Interestingly in the instant case even though the children were getting public assistance, the the state would have lacked standing under the Paternity Act because the

children were not born out of wedlock. The Family Independence Agency by charging Herron and Lagrone as respondents seeks a paternity determination in a new forum. The Juvenile Court Rules should not be used to give either the state a new forum for determining paternity any more than a biological father should be given a new forum .Both entities are barred from the appropriate forum, and both now see relief in what each views as a less restrictive setting. Ironically, Larry Lagrone though facing termination wants to use the Juvenile Court Rules to establish parental rights while the FIA and the Prosecutor want to establish that Larry Lagrone has parental rights only so that those rights can be terminated and the children can be committed to the state with a clear title. The state cannot have it both ways-- it should not name both a legal father and for the same children a putative father, allege that two men have the same legal duties to same child, that both men breached those duties ,and therefore, the rights of all fathers are subject to termination. Heights of legal incongruity have been reached in this case as Co-Petitioners three times have charged a legal father, two named putative fathers, and John Does all with parental responsibilities. {App.13a-14a}.The Juvenile Court Rules are continually abused by FIA naming men as respondent parents, then creating the magical illusion of standing, thereby mesmerizing the trial courts into appointing attorneys for men who have no substantive parental rights.

D. THE JUVENILE COURT RULES NEVER ENDOW A PUTATIVE FATHER WITH STANDING UNLESS USED INCORRECTLY.

When it comes to fathers, the Juvenile Court Rules are a brilliant legal machine, designed to provide substantive and procedural due process to actual legal fathers, to offer procedural due process to true putative fathers, and to allow a finding of probable cause to elevate a putative father to a biological

one and to allow him a limited time period to become a legal father. It is a machine that is often not plugged in at the intake level when a decision is made whether to authorize a petition, MCR 3.962, MCR 5.965 and MCL 712A.13a(2), and it is a machine which many trial courts do not use properly. In the instant case, the trial court did not plug it in at intake and thereby authorized a petition with three named fathers and some John Doe fathers. {App. 13a-14a}. At the pretrial level the trial court was just starting to operate it properly; that was evident when Referee Lee ruled originally that all that mattered was that the children had a legal father. (App 16a) Putative father Lagrone then punched so many legal buttons by arguing incorrectly how the machine should work that the machine broke down.

A few key points in the owner's manual need to be highlighted as to each type of situation a named "father" could present to a trial court. Situation Number One: If the child is born to a mother married to another man, the biological father has no rights, not even the right to be designated in the trial court as a "putative father". MCR 3.903(A)(23); this Appellee's Argument I(B)

Situation Number Two: If the child is born to unmarried parents, then a putative father can be served at the *court's discretion* and after receiving notice, he be entitled to come forward and request time to perfect his paternity elsewhere but he should not be named as a respondent who breached a duty to a child. AMB, supra at 174; Gillespie ,supra 446. Once given notice, he has may have right to procedural due process depending no the circumstances..MCR 3.921(C)(1) and (2);.AMB, supra at 208-211. If he fails to perfect paternity, the state has no authority to charge him under MCL 712A.2b and no rights to terminate under MCL 712A.19b. AMB, supra at 174. In Situation No. 2, while the Juvenile Court Rules still do not give him standing,

but only an opportunity to change his status so that he can obtain standing, the Paternity Act does.

Then in Situation No. 3, if an identified putative father whom the court has found probable cause to be the biological father does not become the legal father within a certain time limit set by the court, then the putative father loses even the possibility of claiming the right to procedural due process and falls off the court's radar. NEGP, supra at 134. This situation is regulated by MCR 3.921(C)(3):

> The court may find that the natural father has waived all rights to further notice,including the right to notice of termination of parental rights and the right to an attorney if
> (a) he fails to appear after proper notice or
> (b) he appears, but fails to establish paternity within time set by the court.

But, even if the trial court does not find that a waiver is exists, the named putative father still lacks standing under the Juvenile Court Rules because he is not a legal father. FIA has never understood the concept of waiver. Hence FIA throws in every potential named father as well an John Does into petitions. That rule needs troubleshooting by this Court.

The trial court took a wrong turn in the instant case because it was run off the correct legal road by In re Montgomery. Acknowledging that Girard and entire body of case law emanating from it would have denied Lagrone standing to become a legal father in any other forum, It granted Larry Lagrone's motion to substitute himself in as the legal father of three of the children. Neither the trial court or the Court of Appeals in Montgomery understood the machinery of the Juvenile Court Rules, both MCR 5.903(A)(4) and MCR 5.921(D)(2) [now MCR 5903(A)(7) and MCR 3.921(C)(2)] functioned.

Despite being wrongly decided under then-extant Juvenile Court Rules, the

holding in Montgomery in has supplied a paternity platform for Larry Lagrone. Respondent Lagrone convinced the court that MCR 5.903(A)(4) [now MCR 3.903(A)(7)] was not a mere definition rule but that the rule justified expanding the authority of the Juvenile Court to determine paternity. Hence, it is not that the Juvenile Court Rules do provide greater standing than the Paternity Act, it is the trial court's blatant and incorrect use of the Juvenile Court Rules in this case, which has provided him with standing.

In re Montgomery caused the trial court with great reluctance in this case to allow Larry Lagrone to win the fatherhood lottery. His ticket was incorrectly validated by that case. Montgomery not only butchered the Juvenile Court Rules which still exist in re-numbered form, it was decided prior to Girard v. Wagenmaker . 437 Mich 31 51; 470 NW2d 372 (1991). In short, Montgomery was not good law then, and should certainly not be considered good law now. Decided in 1991, Girard has provided a strong foundation for a long line of appellate decisions regarding issue of fatherhood not only in paternity cases, but in divorce, adoption, and in estate matters. This case needs to apply Girard to child protective proceedings. This Court's decision in In re CAW agrees with Girard by upholding the sanctity of marriage.

A review of the case law shows that the Girard reasoning permeates the analysis made by the appellate courts in disparate types of cases. For example, in the stepparent adoption case In re A.L.Z,247 Mich App 211 (2001), the Court of Appeals held that the putative father who had not established paternity "was effectively a non parent" and thus "had no real right to visitation or communication with the child. The Court cited Girard, supra,, as authority. In in re Estate of Quintero 224 Mich App 682 (1997), Intervenors who were the adult children of an intact marriage could not claim inheritance rights in the estate of

their alleged biological father. The Court of Appeals held that Intervenors lacked standing to challenge paternity either because of res judicata or because of Girard and its " traditional preference for respect and the presumed legitimacy of a child born during a marriage." Quintero supra at 694,citing Girard at 47 Mich 231, 246. This Court upheld that public policy in CAW supra. In a divorce case, McHone v. Sosnowski, 239 Mich App 674; 609 NW2d 844 (2000), the Court of Appeals likewise applied the reasoning of Girard to deny standing to a biological father regarding paternity of a child born to an intact marriage. Girard would deny Lagrone a paternity forum in every other type of case. No argument exists that a child protective proceeding constitutes a reason to ignore the holding of Girard.

ARGUMENT IV

BECAUSE MCR 3.921(C)(2)(B) [FORMERLY MCR 591(D)(2)(B)] DOES NOT ENDOW THE FAMILY DIVISION WITH THE AUTHORITY TO DETERMINE THAT A PUTATIVE FATHER IS A CHILD'S NATURAL FATHER IF THE CHILD ALREADY HAS OR HAD A LEGAL FATHER, THE TRIAL COURT MAY IN ITS DISCRETION ASCERTAIN IF A PUTATIVE FATHER EXISTS AS DEFINED IN MCR 3.903(A)(23), BUT CANNOT IN A CHILD PROTECTIVE PROCEEDING ALTER HIS PATERNITY STATUS.

A. ISSUE NO. 4 OF THIS COURT'S BRIEFING ORDER INCORRECTLY ATTRIBUTES AUTHORITY TO THE TRIAL COURT TO DETERMINE THE EXISTENCE OF PUTATIVE FATHERS IN EVERY CHILD PROTECTIVE PROCEEDING.

This Appellee takes exception to the working of Issue Number 4 in this Court's order of September 25, 2003. That portion of the Order read as follows:

> Given that MCR 3.921(C)(2)(b) [formerly MCR 5.921(D)(2)(b)] authorizes a family division judge to determine that a putative father is the child's "natural " father, does the rule authorize that judge to determine that the

> putative father is the legal father or must the putative father file a complaint pursuant to the Paternity Act?

Although the dependent clause in the above sentence incorrectly assumes that the trial court has authority in every child protective proceeding to determine that a certain male is a putative father under MCR 3.921(C)(2)(b){MCR 5.91(D)(2)(b), actually the trial court in a child protective proceeding lacks authority to determine the identity of the putative father *if the child already has a legal father.* Consequently, Appellee argues that the "given" in the Court's issue is not actually a "given." The Juvenile Court Rules mandate that the trial court's inquiry should stop regarding paternity once it is established that the minor has or had a legal father. {See Argument 1).

MCR 5.921(D)(2) [not MCR 3.921(C)(2)} governed notice and a method of proceeding as to putative fathers at the time the petition was filed in the instant case. It stated the following:

> If at any time during the pendency of a proceeding, the court determines that the minor has no father as defined in MCR 5.903(A)(4), the court may in its discretion take appropriate action as described in this subrule. {emphasis added}.

The above subrule remains the same, but is now re-numbered. The dependent clause in the quotation from the court rule imposes a pre-existing condition upon the trial court,and thus, Issue No. 4 is incorrectly framed. Significantly, MCR 3.921(C)(2)(b) bans the trial court from inquiry into paternity issues after the trial court has determined that the child has a legal father.

Paternity issues routinely, but unnecessarily slow down, child protective proceedings. Permanency is delayed because trial courts misconstrue and fail to follow the route they should take under the Juvenile Court Rules, to wit: the trial court must first ascertain if any named individual is the legal father, and

secondly, if such an individual exists, end the paternity inquiry there. Justice Weaver highlighted this feature of MCR 3.921(C)(2)(b) in her concurring opinion in In re CAW, supra.

Simply stated, the Juvenile Court Rules preclude the trial court to continue beyond the definition stage found in MCR 3.903(A)(7) if some man already fits into one of the definitions of legal father. Take the example of an adopted child adopted by Mr. and Mrs. Smith and who is subsequently alleged to be neglected in his adoptive home. Mr. Smith died prior to the filing of the child protective proceeding. Could any one argue that the trial court should and could look for the child's pre-adoptive and/or biological father? MCR 3.921(C)(2)(b) would obviously not be able to justify throwing a legal hand grenade into an intact family.

No, in above scenario, the Juvenile Court Rules compel the trial court to examine MCR 3.903(A)(7), to ascertain that under one of the definitions, ie (7)(b), the child has a legal father (though now deceased), and stop the inquiry into possible biological fathers. The trial court lacks any authority to conduct a safari for sperm donor Mr. John Doe. The same is true in the instant situation as the children already have a legal father, married to the mother, and have a legally-intact family. Even when the Petitioner presents the trial court with the results of its hunt for "father" game as did FIA and the Prosecutor in this case, the trial court is not permitted to accept the results of their hunt. No authority exists under the Juvenile Court Rules in the situation of an adopted child subject to a child protective proceeding for the trial court to ascertain the identity of the biological father for and serve him with notice. The trial could not permit said individual to come forward, to advance into the paternity jungle, to become the legal father, and potentially to destroy the child's inheritance rights

while causing havoc in the adopted family.

Likewise, no authority exists under the Juvenile Court Rules for the trial court in the situation where a legal father already exists to ascertain a biological father, give him notice, and by so doing allowing him to throw a legal monkey wrench into an intact legal relationship. The end result of the trial court's misuse of MCR 3.921(C)(2) in the case now before this Court was legal chaos as three of minors in this case now arguably have two "legal" fathers- Richard Jefferson and Larry Lagrone. No exception is made under MCR 3.931(C)(2)(b) for the trial court in a child protective proceeding to look for any more fathers if a child already has a legal father as defined in MCR 3.903(A)(7)- even if the legal father is not the biological one. Whether legal fatherhood is obtained through adoption, marriage, voluntary acknowledgment, or obtaining an order of filiation, MCR 3.921(C)(2) is simply not a player if some man fits into the definition of legal father. Not one Juvenile Court Rule exists that allows the trial court to chose between two men- a pre-existing legal father because of marriage and a man who claims or can even prove biological fatherhood.

Thus MCR 3.903(A)(7) holds up a STOP sign to the trial court and instructs it, if a legal father already exists, not to proceed to issues of the existence of, and thus need for service of process on, a putative father. With the enactment of the revised Juvenile Court Rules, the argument that MCR 3.921(C)(2)(b) is not a gateway rule for permissive intervention of a biological father became even stronger. Under the revised rule entitled "**Definitions,**" a DNA-proven biological father or a man claiming to be a biological father is not legally designated as "putative father." MCR 3.903(A)(23) a new subrule, limits the definition of "putative father." A man cannot be designated as a "putative father" if the child has a legal father. This Court could basis its entire decision

in the instant case on the definition of MCR 3.903(A)(23) because neither Larry Lagrone and Fredrick Herron do not even fit the definitions of "putative father."

Almost every party to the instant case and certainly the trial court and appellate court in In re Montgomery, supra, failed to read ,much less digest , the Juvenile Court Rules properly. Those Rules proscribe a procedure and are not part of a legal cafeteria. The trial court cannot pick and chose which Juvenile Court Rule it wants to apply and in what order the trial court can partake of the rules. Nor can it decide if the child gets one legal father or two as it did in this case. When it comes to fathers, a Juvenile Court Rule in a child protective proceeding gets a fixed menu in a prescribed order of courses served by a Higher Court in the form of court rules.

First, the trial court must ascertain if a legal father already exists before it turn to the issue of putative fathers. MCR 3.921(C)(2)(b) is the desert, not the main course. The trial court cannot turn to it first, and sometimes, the trial court may not even be able to order that desert at all. A pre-existing threshold condition is imposed by MCR 3.921(C)(2) [MCR 5.921(D)(2)(B)] regarding putative fathers in that the said subrule does not apply if *the minors already have a legal father.*

Second, the trial court is limited in its choice of its original entree- legal or putative. If legal exists, a choice whether to call someone "putative" simply becomes unavailable because of MCR 3.903(A)(23) The trial court cannot order both and then decide which one, or which father, it likes. The trial court is forced to read the entire menu , ie. all the definitions of fathers and it cannot chose the second entree if the first ,ie "legal," is available. The restaurant can only serve the legal entree; the trial court can only serve and adjudicate the legal father. Thus, if a legal father exists, the other entree- ie. the choice to

ascertain some man is a "putative father"- vanishes.

The trial court cannot order one of each- a legal and a putative father- and then substitute the putative entree for another legal one. That is what the trial court incorrectly did, however, in the instant case. The trial court found legal father in Richard Jefferson, then the Prosecutor strode by with the desert cart and amended the petition to add two allegedly putative fathers to the main menu. This caused the trial court to glance at, then study desert menu in the form of MCR 5.921(D)(2)(b) [now MCR 3.91(C)(2)(b)], and then order off it before it had finished choosing the main entree- legal or putative. Then the trial court ordered a putative entree (actually two-Lagrone and Herron) while keeping the legal one, and subsequently substituted one of its putative entrees for a second legal one, and voila! the trial court had two legal fathers on its plate (Jefferson and Lagrone). along with a spare putative one. Restaurants do not function well in such confusion, nor do trial courts.

The trial court in the instant case felt that it should not look at the desert menu, MCR 3.921(C)(2), but felt that table manners compelled it to acknowledge In Re Montgomery, which embraced the grab and go cafeteria style of picking a father, then terminating, and getting out of cafeteria line. .The Michigan Court of Appeals blessed the trial court's error; years later, the the improper substitution based on someone forgetting to execute a habeas corpus writ became one of the structural supports for Larry Lagrone's legal arguments that the Juvenile Court Rules allow him to perfect paternity. (Opinion and Order of Judge Young, Appellant's App. 4a-9a).

B. THE STRICT CONSTRUCTION OF THE JUVENILE COURT RULES IS MANDATED BY EXISTING CASE LAW.

In September 2001, the Court of Appeals slammed the Wayne County

Family Court and the Family Independence Agency for playing fast and loose with court rules in child protective proceedings. The Court of Appeals reversed a termination proceeding. See In re Pap, 247 Mich App 148 (2001)

Apparently, the Court of Appeals felt that the message was ignored, because once again in the next Wayne County disaster, where the Court and FIA called the child in a child protective proceeding, the Court issued another warning:

> The court rules and statutes prescribing procedures for protective proceedings are not just technical obstacles that may be discarded in the name of expediency or even in the understandable rush to protect a child Rather taken together, the statutes and court rules reflect standards that are essential to the administration of justice. **The statutes and court rules make the proper procedures in a protective proceeding clear. It should be equally clear that they must be followed.** {AMB, 248 Mich App 144, 220 (2002). (Emphasis added)

In AMB, the failure to comply with court rules, resulted in the death of a child; in this case, the failure of the trial court to comply with court rules threatens an intact family. Public policy historically and currently protects intact families from intrusion of a biological father into an intact family. Michael H. supra at 2343.

Upholding what the trial court did weakens the sanctity of marriage and weakens the state's efforts in child protection because it will increase delays in adjudicating child protective petitions. Frustration, not finality of decisions, will be the result. All of this will become about because of a court rule interpretation, not because the Juvenile Code allows it. As the Court of Appeals held in In re SR ,229 Mich App 310; 581 NW2d 291(1998) trial court 's authority in child protective proceedings derives solely from statutes and constitution.

Thus, this Appellee has difficulty answering simply, the main clause of the Court's Issue No. 4 because the dependent clause assumes what the trial court did in this case- ie. determine a natural father- as allowed by the Court Rules.

Further, the main clause assumes that the Juvenile Court Rules can possibly expand a family judge's authority beyond the Juvenile Code ,and the Juvenile Code does not even define father, much less provide a statutory scheme for determine if someone is one. To answer in a simple fashion, the Juvenile Court in a child protective proceeding cannot determine paternity; it can only decide if a man is already a legal father under MCR 3.903(A)(7).

ARGUMENT V.

IN RE CAW APPLIES TO THIS CASE.

. For years, juvenile courts and those who practice juvenile law have needed this Court's guidance on the issue of putative fathers in child protective proceeding.Putative paternity has long constituted one of the chief roadblocks to permanency. In a typical temporary wardship petition, the putative father issue is often a minor speed bump causing delays in trial dates and duplication of hearings, such as pretrials at the inception of the case. FIA and some trial courts are so foggy on the concept that they deem the fathers as "punitive" rather than putative, but ironically the misunderstanding of the issue has been punitive to the children under the Juvenile Court's jurisdiction. Delays cause foster care drift and delay permanency, whether return home or placement in an adoptive family. Now that the federal government has fined the State of Michigan $2.5 million for failure to comply with the Adoption and Safe Families Act [ASFA], which imposes time guidelines for permanency, any case from this Court regarding putative fathers is going to influence trial court judges. Pub.L 105-89, 42 U.S.C. {{ 60-6, 670-679.

Applied to the current case, the majority opinion, which upheld public policy on the sanctity of marriage implied, but failed to hold specifically for an

application of Girard to paternity questions which arise in the child protective proceedings. In other words, legal father is an interested party, and any other alleged fathers, have no forum for paternity determination. The CAW opinion instead focused on the fact that the trial court in CAW had not determined prior to termination of the mother and legal father, that the child was "born out of wedlock," and therefore, the putative father Heier had no standing. Consequently, the requirement of the court rule, ie. MCR 5.903(A)(4)(1) were not met. The majority opinion contains no analysis of when and how the trial court can use the court rule defining fathers, now re-numbered to MCR 3.903(A)(7). The majority opinion thus left the impression that if a man claiming biological paternity comes into a case early enough, the shell game of substituting fathers that happened in In re Montgomery could still be applicable. Instead, Montgomery needs to specifically overruled. Appellee agrees with Justice Weaver's analysis of the timing element inherent in MCR 3.903(A)(7) and implores this Court to expand its holding in In re CAW.

Though the end result of CAW- that putative father Heier lacked standing- applies in this case because the children were born into marriage, what is now needed is for this Honorable Court to provide an in depth analysis and interpretation of the Juvenile Code and Juvenile Court Rules. First, this Court needs to apply the public policy of sanctity of marriage to all litigants, or aspiring litigants, at any stage of the proceeding. In the current case, no father has been terminated, nor even adjudicated. The Court needs to analyze how the definition of "putative father" precludes any alleged biological father to be even designated as "putative," and interpret that rule in the light of standing. Further, the Court needs to clarify that MCR 3.921(C) is a notice rule, which is activated only when no legal father exits. Finally, this Court needs to provide a

road map for the the trial courts on how to use the Juvenile Court Rules to eliminate actual putative fathers and court-determined "natural fathers" from having an interest in a child proceeding after they have been afforded procedural due process and have still failed to become legal fathers in an appropriate, not Juvenile Court, forum.

CONCLUSION AND RELIEF REQUESTED

Appellee/Respondent Tina Jefferson requests that the trial court's finding be REVERSED. Appellee further requests the following:

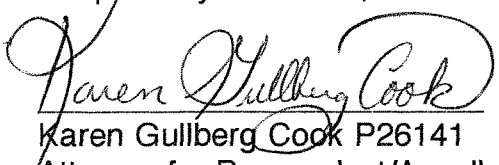
1) that In re Montgomery supra, be specifically overruled;

2) that the Court specifically hold that the Juvenile Code does not provide subject matter jurisdiction to the juvenile court in a child protective proceeding to determine paternity;

3) that the Juvenile Court Rules must be followed, and that that MCR 3.921(C) only applies in the absence of a legal father;

4) that MCR 3.903(23) precludes the legal existence of a putative father if a legal father exists, and therefore, MCR 3.903(7) does not authorize the trial court to re-determine paternity and designate a new legal father.

Respectfully submitted,



Karen Gullberg Cook P26141
Attorney for Respondent/Appellant Mother Tina Jefferson

Date: October 28, 2003